

STATEMENT BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
ON H.R. 5766 AND H.R. 3282

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By

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Mr. Chairman, Mr. Waxman, and Members of the Committee, I appreciate the opportunity to appear here today to discuss H.R. 5766 and H.R. 3282, legislation that would authorize the establishment of so-called "sunset commissions."

With the permission of the committee, and in the interest of keeping my testimony brief, I would like to submit for the record a paper I have written (entitled "Sunset Commission Proposals Would Not Provide "Good Government") that goes into some detail about my concerns with the legislation you are considering today.

I do not believe anyone would argue that there are not changes that could be made in the organization of the federal government and the programs it operates that could improve the efficiency with which services and benefits are provided to the public (potentially providing both budget savings and better services and benefits). I certainly understand the interest of the sponsors of H.R. 5766 and H.R. 3282 in trying to find ways to identify and enact such changes, but I do not believe that either of these two bills would have the desired result.

I believe that the only way that real improvements in organization and efficiency will be achieved is through careful consideration of the enormous amount of information available about the operations of federal programs and a real effort to come up with recommended changes that can garner widespread, bipartisan support among the public and in Congress.

I fear that the sunset commission procedures proposed by H.R. 5766 and H.R. 3282 instead are likely to lead to recommendations that reflect more narrowly partisan and ideological considerations and that could not gain the widespread support necessary to be enacted under the regular procedures that offer opportunities for more full and open debate of legislative proposals.

I think this undesirable outcome is likely because of the combination of the rules for the appointment of members of the commission, the rules governing commission agreement on recommendations, and procedures that allow for terminations of or changes in agencies or programs without enactment of legislation through the normal process.

First, under H.R. 5766 and H.R. 3282, the commissions would have significant partisan majorities. H.R. 5766 calls for the President to appoint seven members to any commission that is established. Four of the members would be appointed in consultation with Congressional leaders (the Speaker of the House would be consulted on the appointment of one member, the Minority Leader of the House would be consulted on the appointment of another, etc.). Assuming that the President takes

the consultation seriously and appoints only members approved by the Congressional leaders, the commission would have a 5-2 partisan majority. Under H.R. 3282, the Speaker of the House and the Majority Leader of the Senate would each appoint six members to the commission, but two of the six would have to be appointed with consent of the Minority Leader of the relevant house. If the House and Senate are controlled by the same party, there would be an 8-4 partisan split on the commission. (Obviously, if the houses are controlled by different parties, the commission would be split 6-6).

The partisan majorities on the commissions under these proposals are crucial because both H.R. 5766 and H.R. 3282 provide that the commissions can report and make recommendations with a bare majority vote of the commission. Thus, the commission can send recommendation to Congress that would eliminate or dramatically change a wide array of programs without the support of any minority-party member of the commission — there would be no need for bipartisanship on the commission. I should also add that, while the sunset proposals appear to be aimed at eliminating or reorganizing agencies or programs, there is nothing in the legislation that would prohibit the commission from including in their proposals legislative language that would change the way programs — including entitlement programs such as Medicare or farm programs — operate.

In the case of H.R. 5766, the legislation proposed by the commission could be considered under restrictive fast-track procedures in the House (the bill says that language governing Senate consideration of commission proposals is “to be provided”). Under the procedures set forth in H.R. 5766, if the committee with jurisdiction over the particular commission recommendation being considered rejects the proposal or adopts an amendment to it, the commission legislation would be considered under the regular rules of the House. But if the committee of jurisdiction does not report the legislation, or reports it favorably without any amendment, then the commission proposal would be considered by the full House with only 10 hours for debate on the bill and no opportunity for minority-party members (or any other member) to offer any amendments to it. If the chairman of the committee of jurisdiction declines to schedule a markup of the commission legislation, there would not even be an opportunity to offer amendments in committee. Thus, a commission recommendation adopted without any support from minority-party members of the commission could be passed by the House without any support from minority-party members of the House and without even any chance for minority-party members to offer amendments. This does not sound like a process that is likely to encourage bipartisan cooperation.

H.R. 3282 does not provide for fast-track consideration of commission recommendations. Instead, it provides that an agency is automatically to be abolished one year after it is reviewed by the commission (regardless of whether the commission recommends elimination of the agency) unless legislation is enacted that reauthorizes the agency. That means that an agency could be abolished even if it has the support of a clear majority of members of the House and Senate. If members of either the House or Senate want to eliminate an agency reviewed by the commission, all they have to do is block enactment of legislation that would reauthorize the agency. If the President supports them, then just over one-third of the members of either the House or the Senate could ensure that such legislation is not enacted by blocking the override of a Presidential veto of that legislation. Or those members and the President could extract a high price from supporters of the agency — such as substantial changes in programs administered by the agency — in return for allowing reauthorization legislation to be enacted.

Together, the partisan makeup of the commissions, the fact that the commissions can make a recommendation without any support from minority-party members, and the procedures that would allow agencies and programs to be eliminated without any support from minority-party members of Congress make it very likely that the commissions would operate in a very partisan manner. Without the need to attract any minority-party support, the leaders appointing members of the commission and the majority-party members of the commission would likely find it very difficult to withstand pressures from the most partisan members of their own party to try to use the commission to achieve changes in agencies and programs that those partisans have sought but been unable to achieve because such changes have not commanded widespread, bipartisan support.

This likely result stands in stark contrast to the commission that many people hold up as a model of how a commission can help Congress and the President achieve results that are highly desirable but politically difficult — the 1983 Social Security commission headed by Alan Greenspan. That commission had an 8-7 partisan split and no fast-track procedures were provided for consideration of the commission's proposal. The members of the commission knew that only a proposal with broad bipartisan support of the members of the commission had any chance of generating the support of the President and both parties in Congress that was needed to enact the commission's proposal. The commission made a recommendation that had broad support on the commission, gained the support of President Reagan, House Speaker Tip O'Neill, and other Congressional leaders, and passed Congress with broad, bipartisan support (after being extensively debated and the subject of many amendments).

In contrast, the sunset commission proposals in H.R. 5766 and H.R. 3282 are unlikely to foster a broad, bipartisan consensus on reorganizing the federal government. They are much more likely to result in minority-party members of Congress being excluded from the policy-making process to a greater extent than they already are under the regular legislative process.

In addition to these broad concerns about the sunset commission legislation, I would like to note one particular issue raised by H.R. 3282. As explained above, that bill provides that an "agency" is automatically to be abolished one year after it is reviewed by the commission unless legislation is enacted to reauthorize the agency. It is not clear to me what happens to the programs administered by an agency that is abolished. When a similar proposal was offered as an amendment in the House in 2004, one of the cosponsors of that amendment (former Democratic Representative Jim Turner of Texas) stated that "...the laws administered by these agencies do not sunset....We specifically have language here to ensure that the laws that administer various programs, and that are important to a lot of constituencies, do not disappear when the agency disappears." (Congressional Record, June 24, 2004, page H4975.) I have not been able to identify any language in that amendment, or in H.R. 3282, that specifically provides that programs administered by an agency that is abolished would not themselves be abolished and that leaves me very uncertain about what would happen to those programs.

Again, thank you for the opportunity to testify here today.

July 19, 2006

SUNSET COMMISSION PROPOSALS WOULD NOT PROVIDE “GOOD GOVERNMENT”

By James Horney

The House Government Reform Committee is scheduled on July 20 to mark up two bills that would establish “sunset commissions.” These sunset commission proposals could be considered by the full House as early as the week of July 24.

The two bills before the Government Reform Committee are H.R. 5766, introduced by Representative Todd Tiahrt (R-KS), and H.R. 3282, introduced by Rep. Kevin Brady (R-TX). Somewhat different sunset commission proposals have been proposed by the Bush Administration (in addition to H.R. 3282, Rep. Brady also introduced H.R. 3277, which is a version of the Administration’s proposal) and by Rep. Tiahrt, who, in addition to H.R. 5766, introduced H.R. 2470. In the Senate, a sunset commission proposal was included in the far-reaching budget process legislation (S. 3521) put forward by Budget Committee Chairman Judd Gregg (R-NH) and reported by the Budget Committee on June 20. (It is not clear when the Senate might consider that legislation.)

These sunset commission proposals have been promoted by their sponsors as “good government” reforms to increase efficiency and reduce waste. Examination of these proposals shows, however, that they have a darker side. Under the sunset commission proposals being considered by the House Government Reform Committee, as well as under the other leading proposals that have been introduced, extensive program terminations and reductions could be achieved via the use of extraordinary procedures. Far-reaching changes could be developed by a sunset commission and put into effect on a purely partisan basis, without any support at any stage of the process from a single member of the minority party and with minority-

KEY FINDINGS

- The President and Congressional Republican leaders are advocating “sunset commission” proposals. Such proposals would facilitate the elimination of federal agencies and programs that have considerable public support and that would likely survive any attempt to abolish them through the regular legislative process.
- The leading sunset bills pending in Congress have a distinct partisan slant. A bare majority of commission members — appointed by Republican leaders — could recommend elimination of important programs. Under special procedures included in the sunset commission proposals, agencies and programs could then be eliminated without a single vote in favor of elimination by a member of the minority party.
- The commission’s mission would be ideologically skewed, because it would be barred from proposing the elimination of “tax expenditures,” which are the \$800 billion spent each year on special interests and others through the tax code.

party members of Congress prohibited even from offering amendments at any stage of Congressional consideration. In some versions of the sunset commission proposal, including H.R. 3282, agencies could be abolished even if Congress declines to pass the legislation containing the commission's changes.

Proponents of these proposals may argue that a sunset commission would identify wasteful, duplicative, or outdated programs that could be eliminated or realigned and could to help build broad bipartisan consensus in support of legislation to make such changes. If the proposal were designed in a manner to foster such a result, few would quarrel with it. That, however, is not the probable result of the leading sunset commission proposals.

- The commissions established under any of the leading sunset commission proposals would likely have a distinct partisan (and ideological) slant. Under H.R. 5766, the President would appoint seven members to any sunset commission he establishes.¹ The President would be required to consult with top Congressional leaders on the appointment of four of the members of the commission (he would be required to consult with the Speaker of the House on one appointment, the Minority Leader of the House on another, etc.). Assuming that the President would take the consultation seriously and only appoint members that the Congressional leaders approve of, there would almost certainly be a 5-2 partisan majority on the commission. Under H.R. 3282, the Speaker of the House and the Majority Leader of the Senate would each appoint six members of the commission.² Four of the commission members appointed would be members of the House, with no more than two from the same party and the minority members appointed with the consent of the House Minority Leader. Four of the commission members appointed would be members of the Senate, with no more than two from the same party and the minority members appointed with the consent of the Senate Minority Leader. This would likely result in an 8-4 partisan majority on the commission.

The partisan majorities on the commissions are highly significant, because under these proposals, *only a simple majority of the commission* would be needed for the commission to pass its recommendations. Thus, the commission's recommendations could be developed and approved on a strictly partisan basis.

- The problems caused by the partisan way in which of the commission could conduct its business would then be exacerbated by another critical feature of all the leading proposals — the sunset commission proposals all include a mechanism to allow agencies and programs to be eliminated, regardless of whether legislation to accomplish that could be enacted through the regular legislative process. H.R. 5766 would provide for fast-track consideration of the legislation proposed by any sunset commission "to reorganize, consolidate, abolish, expand, or transfer the Federal programs and agencies reviewed by the Commission."³ If the committee with jurisdiction

¹ H.R. 5766 grants permanent authority for establishment of sunset commissions — with no limits on the number of commissions or when they can be established — either by executive order or legislation that would specify which programs that particular commission would review.

² Under H.R. 3282, there would only be one commission, but that commission would remain in place until the end of 2030 (with new members appointed as their terms expire), reviewing every federal agency at least once every 12 years and submitting annual reports and recommendations to the Congress.

³ It would seem that changes in any federal program — entitlement programs such as Medicare, as well as programs funded through annual appropriations — would be within the scope of a sunset commission appointed pursuant to H.R. 5766, subject to the executive order or legislation establishing the commission.

over the proposed changes does not report the legislation within 30 days or reports the proposal favorably without any amendments, the bill would then be considered by the full House under rules that would limit debate to 10 hours and prohibit consideration of *any* amendment on the House floor. If the Chairman of the committee of jurisdiction declines to schedule a markup of the commission proposal, there would not even be any opportunity for consideration of amendments in committee. Under these special procedures, the normal Congressional steps that can be used to try to develop consensus — committee mark-ups and the offering and consideration of amendments on the floor of the House — would be dispensed with.⁴ As a result, a series of far-reaching recommendations entailing sharp program eliminations and cuts could be developed in the commission on a purely partisan basis and brought to a vote on the House floor, with the minority party barred even from offering amendments.⁵

- H.R. 3282 would use the regular legislative procedures for consideration of the commission's legislative proposals, but would require that every federal agency be *automatically abolished* one year after the sunset commission completed its review of the agency, unless new legislation to reauthorize the agency was enacted within this one-year window. (The President's proposal includes a similar provision, in addition to fast-track consideration of the commission's proposals.) That would enable Members of Congress who sought to kill various programs or agencies to try to achieve that result by blocking legislation to reauthorize the program within the one-year period.⁶ Alternatively, the President could kill agencies simply by vetoing legislation to reauthorize them and having his veto sustained by one-third of either the House or the Senate. In this manner, agencies could be killed even if they enjoyed broad public support, and legislation to eliminate the program or agency could not possibly pass.

The sunset commission proposals thus go far beyond merely establishing a commission to study federal programs and make recommendations to Congress. These proposals would establish new procedures that could be used on a narrow partisan basis to ram through terminations or dramatic reductions in funding for a range of programs that could not otherwise pass on their own.

Nor would the commission be likely to add much knowledge about shortcomings in the operations of federal programs and how programs might be improved. The Office of Management and Budget, the Congressional Budget Office, and the Government Accountability Office all produce substantial amounts of information on these matters. The proposed commission would likely add little to the extensive information that these institutions already produce.

Below, this analysis examines and explains these issues in more detail.

⁴ If the committee of jurisdiction reports the commission's proposed legislation unfavorably, without recommendation, or with an amendment, the commission legislation would then be considered under the regular rules of the House. The majority members of the committee could that outcome without any votes from minority members of the committee.

⁵ Although it presumably assumes fast-track procedures would be used in the Senate for consideration of the commission proposals, H.R. 5766 says only "language to be provided" under its "Consideration in the Senate" section

⁶ It is not clear what the sunset of an agency means in Rep. Brady's bill. When essentially the same plan was considered by the House in 2004, one of the cosponsors of the plan (then-Representative Jim Turner, Democrat of Texas) maintained that "...the laws administered by these agencies do not sunset....We specifically have language here to ensure that the laws that administer various programs, and that are important to a lot of constituencies, do not disappear when the agency disappears." (*Congressional Record*, June 24, 2004, page H4975.) It is not clear what language in the legislation Representative Turner was referring to. Despite that reassurance to members who were considering whether to vote for that amendment, there was no language in it that made it clear that programs administered by an agency that is abolished would not themselves be abolished and there is no such language in H.R. 3282.

Sunset Commission Proposals Are Unlikely to Produce Promised Results

Proponents of sunset commission proposals argue that a commission will help to eliminate wasteful or duplicative federal programs and expenditures. The adoption of any of the leading sunset commission proposals would, however, likely produce results quite different from what the rhetoric surrounding these proposals would suggest.

A Sunset Commission is Unlikely to Result in Useful New Information

One argument for a sunset commission is that it would produce a significant amount of new, objective information that would help the President and Congress eliminate or reorganize wasteful or inefficient federal agencies and programs. It is unlikely that such a commission would have this result, however, since an enormous amount of information about federal programs already is available to the President and Congress. (Nor is there any reason to believe that the production of additional useful information is dependent on the existence of a sunset commission.)

The Office of Management and Budget, the Congressional Budget Office, and the Government Accountability Office all produce reams of information about the operations of federal programs and changes in those programs that might reduce costs. OMB, for instance, oversees the Program Assessment Rating Tool (PART) program, which it says is designed to assess "how well a program is performing, so the public can see how effectively tax dollars are being spent."⁷ According to OMB, the performance of *all* federal programs will have been assessed under PART by the end of 2006. Furthermore, according to OMB, the PART assessments already provide exactly the kind of information that the sunset commission proposals envision: "Sometimes, a program assessment finds that a program is duplicative of other, better run programs or even that the program has already fulfilled its original purpose. In cases such as these, one of the follow-up actions might be to work with the Congress to end, or terminate, the program."⁸ Questions have been raised about whether the information provided by the PART process appropriately and objectively determines whether a program is effective and efficient, but there is no reason to believe that a sunset commission would improve the quality of such information, especially since the commission likely would rest heavily on the work that OMB's PART process produces.

The Congressional Budget Office periodically publishes a *Budget Options* report, which includes numerous possible changes (more than 200 in the most recent volume) in federal programs or taxes that could be used to reduce the deficit.⁹ CBO does not make recommendations to the Congress, but the *Budget Options* volume contains arguments for and against reducing or eliminating various programs, including claims that a program is inefficient or is not accomplishing its stated goal.

⁷ OMB's ExpectMore.gov website explanation of the PART program, <http://www.whitehouse.gov/omb/expectmore/about.html>

⁸ Ibid.

⁹ Congressional Budget Office, *Budget Options*, February 2005, <http://www.cbo.gov/ftpdocs/60xx/doc6075/02-15-BudgetOptions.pdf>

Finally, the GAO publishes hundreds of reports every year assessing the performance of government programs and recommending changes that could make the programs more efficient. In particular, GAO's Performance and Accountability series of reports focuses on program areas "at high risk due to either their greater vulnerabilities to waste, fraud, abuse, and mismanagement or major challenges associated with their economy, efficiency, or effectiveness."¹⁰

A Sunset Commission is Unlikely to Produce Bipartisan Compromise Recommendations

In certain circumstances, a commission may be a useful mechanism to help the President and legislators of both parties reach agreement on steps that need to be taken to achieve some shared goal. For example, the "Greenspan Commission" helped forge the compromise Social Security legislation that was enacted in 1983, with the support of President Reagan, House Speaker Thomas P. O'Neill, and other Democratic and Republican members of Congress. That legislation extended the solvency of Social Security for a number of decades. The Greenspan commission was successful, however, because there was widespread agreement that extending the solvency of Social Security was crucial, that it would take a mix of policy changes (including both tax increases and benefit reductions) to accomplish that goal, and that the only way to pass the necessary legislation was with broad, bipartisan support. The commission was not viewed by either side as an attempt to ram through a partisan agenda that could not be enacted through the regular legislative process. The appointees to the commission reflected the desire of the President and Congressional leaders of both parties to develop a truly bipartisan approach to the problem. The fact that no legislation could have been enacted without broad bipartisan support encouraged the commission to produce a recommendation that represented a thoroughly bipartisan compromise.

Unfortunately, the conditions that exist today do not seem conducive to a commission like the Greenspan Commission. For instance, while we once again face the prospect that Social Security will become insolvent without changes in policy (although insolvency is not as imminent as in 1983), there is not yet general agreement among lawmakers that it will require a mix of policy changes on both the tax and benefit sides to solve the problem and that there must be broad, bipartisan support to enact such legislation. In 2001, for instance, President Bush named seven Republican and seven Democratic members to a Social Security commission, but limited the appointments to people who supported his proposal to divert a portion of Social Security taxes to establish personal savings accounts and who were willing to rule out closing even a modest fraction of the Social Security shortfall through measures to increase Social Security tax revenues. As a result, the commission did not produce a recommendation that could achieve the widespread, truly bipartisan support needed to achieve the necessary reforms in Social Security.

Similarly, although the appointees to President Bush's tax reform commission had somewhat more diverse views than his Social Security commissioners, they were required to agree to produce a reform plan that would produce a level and distribution of revenues consistent with what will occur under the current tax system if the President's 2001 and 2003 tax cuts are made permanent, a condition that made widespread bipartisan support for the panel's recommendations virtually impossible.

¹⁰ For links to some of these reports, see GAO's website: <http://www.gao.gov/pas/2005/>

Why BRAC is Different

Proponents of sunset commission legislation sometimes argue that the experience with the Base Realignment and Closure (BRAC) process shows it is necessary to establish special procedures to ensure that beneficial proposals recommended by an expert commission are implemented. This argument ignores the special circumstances surrounding decisions to realign or close military facilities that the BRAC process was designed to overcome.

Under BRAC, a commission appointed by the President, subject to consultation with Congressional leaders and confirmation by the Senate, reviews Department of Defense recommendations for realignment and closure of military facilities.* After extensive hearings and a review of the Defense Department recommendations by the GAO, the commission submits its recommendation for facilities to be realigned or closed. If the President approves those recommendations, they go into effect if Congress does not enact legislation disapproving the recommendations in their entirety within 45 days.

Some observers credit the BRAC process with facilitating necessary and desirable reductions in the number and size of military facilities that would have proved impossible to achieve in the absence of the BRAC process. If so, however, that does not mean a similar process would be appropriate to achieve the realignment or elimination of federal programs. BRAC was established to deal with a unique situation created by the dual benefits that military facilities provide — the benefits from the defense capabilities they provide (which accrue to all Americans and to other people around the world) and the economic benefits they provide to the communities in which they are located. There was widespread agreement starting in the 1980s that the United States had many more military bases and other facilities than were needed to provide for the national defense. Lawmakers who supported reductions in the number of bases, however, could not support legislation that would close bases in their own districts or states. The BRAC process provided a means to get around the peculiar geographical problem related to base closings.

Proponents of a sunset commission may argue that the problem we face with lawmakers who support reducing federal spending in general, but oppose legislation eliminating various specific programs, is the same problem that BRAC dealt with. That is not the case. There is a very large difference between allowing a commission to determine which particular military bases in which geographic locations (all of which serve the purpose of providing for the national defense) will be closed and deciding which programs (which serve numerous, different purposes) will be eliminated or cut. Moreover, decisions regarding terminations or reductions in programs generally do *not* involve decisions that single out some geographic locations while sparing others. The geographical decisions about which bases to close are ones that experts on a commission can probably make more appropriately than members of Congress who must try to protect their home districts or states. In contrast, decisions about which programs are truly important and necessary to the nation are exactly the sort of decisions that elected officials in a democracy are supposed to make, through a process that allows for full and open debate.

* The BRAC process was initially established in 1988, and (with some subsequent changes in the process) has also been used in 1991, 1993, 1995, and 2005. The desire to maintain an ongoing BRAC process, the technical nature of the decisions being made by the commission, and the requirement for Senate confirmation of commission members seems to have led to a more bipartisan approach to BRAC than would likely be the case with the sunset commissions that would be established under the proposals discussed here.

The proposed sunset commissions suffer from a similar problem. They would be charged with recommending terminations or reductions in federal programs, but this charge would *not* include the examination of any of the nearly \$800 billion a year of measures in the tax code that the Joint Committee on Taxation and OMB have termed “tax expenditures” (and Alan Greenspan has

referred to as “tax entitlements”) because they involve spending through the tax code. This skewing of the commission’s mission, along with the current partisan political climate, make it unlikely that the commission would produce recommendations that can attract widespread bipartisan support. (Indeed, the fact that all of the sunset commission proposals contain some mechanism to enable programs to be eliminated or reduced *without* such actions being approved through the regular legislative process itself suggests that the proposals’ authors do not anticipate that the commission’s recommendations would engender broad, bipartisan support.)

And the fact that, as noted, either all or a sizable majority of the commission’s members would be appointed by the party in power only aggravates this problem.

- Under H.R. 5766 and the Administration’s proposal, the President would appoint all seven members of the commission. (He would be required to consult about one appointment each with the Speaker of the House, the Majority Leader of the Senate, the Minority Leader of the House, and the Minority Leader of the Senate.) This would lead to a 5-2 partisan majority on the commission.
- Under H.R. 3282, the Speaker of the House would appoint six members of the commission and the Majority Leader of the Senate would appoint the other six members, although two of the six members in each case would have to be members of the minority party appointed with the consent of the Minority Leader of the relevant body. If one party controls both Houses of Congress, this would lead to a 8-4 partisan majority.
- Under Chairman Gregg’s plan, the President, the Speaker of the House, the Minority Leader of the House, the Majority Leader of the Senate, and the Minority Leader of the Senate would each appoint three members of the commission, with the result that 9 members would be appointed by Republican leaders and 6 by Democratic leaders.

The rules regarding the appointment process and the composition of the commission are of particular importance because, as also noted above, the proposals require only a simple majority vote for the commission to approve the recommendations it sends to Congress and the President. Bipartisan support on the commission would be unnecessary.

Proposals Include New Procedures to Achieve Program Cuts That Could Not Be Enacted Under Normal Legislative Procedures

The leading sunset commission proposals also would alter normal budget procedures to make it easier to achieve the elimination of a wide array of programs with the support of only a bare, partisan majority.

- H.R. 5766, the President’s plan, and Chairman Gregg’s plan all provide “fast-track” procedures for consideration of sunset commission proposals. The President and Chairman Gregg would require an up-or-down vote on the commission’s proposals with limited time for debate — and with the *no amendments allowed*. H.R. 5766 would require the House to vote up or down on a commission proposal with no amendment allowed unless the committee with jurisdiction over the particular proposal rejects it or amends it (if the Chairman declines to schedule a markup of the

commission legislation, the fast-track procedures limiting debate and prohibiting amendments take effect). The normal legislative steps that tend to encourage consensus — committee markups, consideration of amendments on the House and Senate floors, and the need to assemble a filibuster-proof coalition in the Senate — would be eliminated and replaced with a process that facilitates the passage of legislation by a bare majority, with little or no support from the minority party and with the minority party prohibited from offering amendments at any stage. (By contrast, if recommendations to eliminate or sharply cut programs had to be considered under the regular legislative process, a recommendation that lacked bipartisan support would almost certainly falter.)

Under H.R. 3282, the commission's proposals would be considered under the regular legislative procedures, *but every federal agency would be automatically abolished one year after the sunset commission completed its review of the agency*¹¹ (the bill requires that each agency be reviewed once every 12 years), unless legislation is enacted during the one-year interval to reauthorize the agency. Proponents of eliminating a particular agency could try to achieve that result under Rep. Brady's bill simply by blocking reauthorization of the agency during the one-year period. Furthermore, if the President wanted to eliminate the agency, he could do so by vetoing the legislation reauthorizing it. If just over one-third of the members of either the House or the Senate voted to uphold his veto, the agency would be killed — even if it enjoyed wide support in both the House and Senate and legislation to eliminate it could not have come close to securing Congressional approval.

The President's proposal contains a similar provision. In addition to proposing fast-track consideration of legislation recommended by the commission (without any amendments allowed), it provides that agencies *and programs* be automatically abolished within two years after the commission's proposals regarding these agencies or programs are submitted to Congress, unless legislation is enacted in that two-year period reauthorizing the agencies and their programs. Under the President's proposal, if Congress fails to act to reauthorize an agency or program, the agency or program is automatically abolished, even if the commission did *not* recommend termination of the agency or program and called for no or only minor changes in how the agency or program operates.

Conclusion

The name "sunset commission" suggests a plan that will shed light on the operations of the federal government and allow a democratic consideration of ways to improve how the government serves the citizens of the United States. But the sunset commission proposals before Congress instead would set up a process that would allow those seeking to eliminate or reduce a wide array of significant programs to achieve that goal *without* having to go through the regular legislative process, which provides an opportunity to amend such plans. These sunset-commission proposals would allow the use of highly unusual procedures that would enable a bare partisan majority to seek to ram through radical changes in the federal government, with members of the minority party effectively shut out of the process. That hardly qualifies as a "good government" reform.

¹¹ It is not clear what the sunset of an agency means in Rep. Brady's bill. See footnote 5.